THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.6033 of 2007

Date:27-11-2007

Between:
Gunturu.Venkatesh.

...
Petitioner

AND
The State of Andhra Pradesh, represented by Secretary, Medical and Public Health Department, Hyderabad and five others.

... Respondents

Counsel for the petitioners: Sri P.Anand Seshu.

Counsel for the respondent: G.P. for Medical & Health.

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HONOURABLE MR.JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.6033 of 2007

ORDER:-

The petitioner, who is involved in manufacturing of certain food items, which the petitioner claims to be protein food supplements, filed this Writ Petition, wherein he questioned the alleged interference by respondents 2 to 5 with his business as illegal, unauthorized, arbitrary and in violation of Articles 19(1)(g), 21 and 300A of the Constitution of India. He also sought for an order to restrain the respondents from such interference.

In his affidavit, the petitioner averred that he had established M/s.Arvind Foods and Drugs at Door No.2-25, Yadava Bazar, Peda Kakani, Guntur District, that the Food Inspector D-II, Guntur District, granted license on 25-7-2005, which was renewed on 17-4-2006, that under the license he was permitted to manufacture, sell, offer or expose for sale and distribute for sale protein food supplements and that the license was valid from 1-4-2006 to 31-3-2007. He further averred that protein food supplements and dietary supplements are not medicines or drugs, that the Sub-Inspector of Police, Peda Kakani Police Station raided the premises of M/s. Arvind Foods and Drugs, prepared a mediators' report, and on the strength of the mediators' report registered a case in Crime No.27 of 2007 on 4-2-2007 for the offences punishable under Sections 420, 487, 274, 275 and 276 IPC, that the petitioner was arrested and produced before the VI Additional Munsif Magistrate, Guntur, who remanded the petitioner for judicial custody till 19-2-2007, and that, later he was released on bail. The petitioner also pleaded that the said action was taken on the complaint given by Sri Konda Siva Rami Reddy, alleged President of Lok Satta, Guntur District Branch, on 3-2-2007, wherein it was alleged that

the items manufactured and sold by the petitioner's unit viz., Skyplex syrup, Mediplex syrup, SKRP Plex, Medizyme and Arofer Syrup, caused side affects to certain persons. He also averred that final report on the said Crime has not yet been filed by the Police and that the mediators' report, which is the basis for registering the said Crime, does not disclose commission of any of the alleged offences, such as deception, adulteration of any drug or making any false mark upon any receptacle containing goods, sale of adulterated drugs or sale of any drug or medical preparation by misbranding, in order to attract the alleged offences for which Crime No.27 of 2007 was registered against the petitioner. On the said premises, the petitioner pleaded that interference with his business by the respondents violates his fundamental and other Constitutional rights.

Sri P.Suryanarayana, Food Inspector, Guntur District, respondent No.3 on his and on behalf of respondent No.1, filed a counter-affidavit in which he averred that Rule 50(1) of the Prevention of Food Adulteration Act, 1954 (since repealed and replaced by the Food Safety and Standards Act, 2006) (for short "the Act") prohibits manufacture for sale, or store, sell or distribute or exhibit for sale any article of food, including prepared food or ready to serve food and irradiated food except under a license. He also referred to and relied upon the definition of 'food' under Section2 (v) of the Act. He admitted that in accordance with the procedure laid down under Section 50(1) of the Act, the Food Inspector D-II, Guntur granted license to M/s.Arvind Foods and Drugs, Pedakakani, Guntur District for repacking of food items, viz., Glucose, and that the period of license having expired on 31-3-2007, it was not extended further. Respondent No.3, however, denied his interference with the petitioner's business.

No counter-affidavits have been filed on behalf of respondents 2, and 4 to 6.

Heard Sri P.A.Seshu, learned counsel for the petitioner and learned Government Pleader for Medical and Health for the respondents and perused the record.

A reading of the mediators' report shows that the Police of Peda Kakani raided the petitioner's premises at Door No.2-25 of Peda Kakani village, on the information that the petitioner was indulging in manufacture of drugs endangering the health and lives of the people. The Food Inspector also joined the Police and their inspection appeared to have revealed that about 32 cartons containing labels, such as Prozen Tej Nutritiomals, Medical and Health Colony, Plot No.III, Vanasthalipuram, Hyderabad; UNI-Pro-United Labs, Secunderabad; Net Pro marketed by TCL Pharma, Mumbai; Renozyme manufactured in India by Aravind Foods and Drugs, Hyderabad; HIPLET promoted by BID Care Pharmaceuticals, Chennai; Gloplex marked by Hindu Drugs, Mumbai etc., were found. They also found certain bottles in the premises containing labels of 13 varieties, such as Skyplex syrup, Topzyme, Arofer, Reslozyme, Medicozyme, Glowvit, Glozyme, etc. The petitioner, who was present during the inspection, stated to have informed that some of the drugs found by the inspection party are used for Vitamins and that he used to stamp on the medical bottles and cartons batch numbers of his choice by using punching machine and he further replied to a question that he has not employed any technicians or lab experts in the manufacture of medicines. Examination of diary by the Sub-Inspector of Police revealed details of seven formulae. After a close

examination of the material found, the Food Inspector opined that they had the characteristics of drugs, and intimation was given to the Drug Inspector, Guntur and the Assistant Director (Drugs), Vijayawada, they have joined the inspecting party and the petitioner was arrested on 4-2-2007. The petitioner stated to have revealed that the manufactured drugs are being exported to medical shops at Kamareddy, Karimnagar, Nizamabad, Anakapalli, Nandyala, Narsipatnam, Amudalavalasa, Markapuram and also to places of other states, such as Berhampur, and these drugs are marketed in labour areas in those places. The mediators' report further reveals that the labels, cartons, diaries, tonics, glucose boxes etc., were seized by the Sub-Inspector of Police in the presence of mediators. Crime No.27 of 2007 was registered for the offence punishable under Sections 420, 487, 274, 275 and 276 IPC in Peda Kakani Police Station on 4-2-2007. As already stated, the petitioner was produced before the concerned jurisdictional Magistrate, who remanded the petitioner to judicial custody and later he was released on bail.

The main contention raised on behalf of the petitioner is that since the products manufactured and sold by him fall within the definition of 'food' under the Act, there is no justification to treat the said articles as 'drugs' and that, therefore, respondents have no power and jurisdiction to seize the same. On the petitioner's own showing, the license to manufacture food items expired on 31-3-2007. The mediators' report, on the basis of which crime No.27 of 2007 was registered, shows that the petitioner was suspected of manufacturing drugs without license. The question - whether the goods seized by the respondents fall within the definition of 'food' under the Act or 'drug' under Section 3(b) of the Drugs and Cosmetics Act, 1940

- is required to be investigated and decided in the criminal case. It is not possible for this Court, at this stage, to accept the contention of the petitioner that since the items of goods seized by the Police are food items respondents 2 to 6 have no authority to interfere with his business. Admittedly, the petitioner does not hold a license to manufacture drugs. Until a competent court of law determines nature of the goods manufactured by the petitioner, the respondents cannot be restrained from exercising their powers and carrying out their duties entrusted to them under various statutory enactments. Interestingly, the petitioner has not sought for quashing of the crime registered against him. Unless the petitioner questions the very registration of the criminal case and succeeds in getting the same quashed, he is not entitled to grant of injunction against respondents 2 to 6 as sought for by him in this Writ Petition. More over, as already pointed out, the license granted by respondent No.3 for manufacturing food items expired on 31-3-2007 and in the absence of renewal of license he is not entitled to manufacture even the 'food' items.

In the premises, as mentioned above, the petitioner has not succeeded in convincing this Court that the respondents have committed any illegality in seizing the goods under the mediators' report dated 3-2-2007. Indeed, this Court, while examining the petitions of this nature, cannot be oblivious of rampant manufacture and sale of spurious drugs by unscrupulous and anti-social elements, which has a debilitating effect on the Society at large.

For the above reasons, the Writ Petition is dismissed.

C.V.NAGARJUNA REDDY,J
27-11-2007

MNR